

Chrono
~~SECRET~~OLL 84-1702
25 April 1984MEMORANDUM FOR: C/SECOM
C/ALD/OGC

FROM:

Deputy Director, Office of Legislative Liaison

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SUBJECT: SSCI Staffer's Questions on Leaks

1. While it remains my position that these questions should have been renegotiated with someone at a significant level within the Committee, such as the Chairman, another member or, at least, the Staff Director so that we could have assured ourselves that the questions to which we are responding are indeed Committee questions, it is, at this point, presumably too late to do this. Therefore, I will not interpose an objection to your responding to these questions as submitted. Unfortunately, upon reading these questions and answers, I am left with the impression that we are saying that leaks are a terrible problem and there is nothing that we can do about it. I had hoped that something better would have resulted from the excellently handled SSCI hearing on leaks. Nevertheless, following are some suggestions which I hope you can accommodate.

2. My first suggestion concerns our description of the current fragmented investigative efforts undertaken in leak cases contained on page 5 of the attached paper. As with many of the items listed in response to question 5, which describe the difficulties in identifying leakers, this response should, in my opinion, be positively phrased to state what should and can be done to improve our efforts in investigating leaks rather than highlighting the difficulties currently encountered in this area. Rather than recounting in detail the obstacles faced in investigating leaks on an individual agency basis, a simple statement should be made to the effect that coordinated across the board agency investigations of leaks are required if leakers are to be more effectively identified and subsequent action taken.

3. I have a similar concern with our discussion of "further compromises" of information during the course of an investigation or subsequent court proceeding which is contained on the bottom of page 6. This is a concern almost exclusively of the Department of Justice (DOJ), which could and should be addressed through the institution of appropriate investigative

procedures. I think our answer in this respect should be restated positively to note that while DOJ has some concerns about its ability to investigate leaks without further compromising the information, that appropriate procedures can be carefully constructed to alleviate this concern.

4. With respect to the two items on page 7 concerning media criticism of anti-leak efforts and tolerant attitudes toward leaks and leakers, I would recommend the deletion of both of these items from the paper. Our ability to identify leakers and thoroughly investigate leak cases should not be affected by media criticism of such efforts. Again, rather than compiling a formidable list of obstacles that prevent effective action in this area, we should downplay such difficulties and more positively state what can be done in this area.

5. My next comment concerns the "official leaks" paragraph contained on the top of page 8. As you know, there is no such thing as an "official leak," but instead the action that we are describing in this paragraph is an "authorized declassification." We should make a clear distinction, I think, between permitted declassifications, or authorized disclosures of previously classified information, and unauthorized disclosures of information. If you feel that this subject must be addressed at all, it should be in the context of a statement that the so-called "official leak problem" is nothing but a red herring used to justify real leaks.

6. As to our response to question 6 on the top of page 9 concerning continued FBI action to identify leakers and seeking administrative sanctions short of prosecution, I would suggest that this answer track the language agreed to in the "Investigation" section of the leaks paper recently prepared by the task force which addressed this issue.

7. With respect to question 10 and the drawbacks in relying on the use of publicity rather than the prosecution of the leaker, I am not certain that I understand the due process and procedural concerns that would prevent the use of such publicity in cases involving administrative action. Presumably, the Government would not publicly identify an individual as a leaker unless the Government had clear proof either through an admission or through other convincing evidence that the individual, in fact, had leaked the information in question. While the Government could not use publicity in questionable cases in which the individual's guilt had not been clearly established by the investigation, where the Government was reasonably certain of the individual's violation of public confidence and trust through the

unauthorized disclosure of classified information, similar concerns about due process rights should not be raised in these circumstances.

8. I have no specific suggestions regarding the remaining questions other than the observation that, as a consequence of having accepted the questions and answering them, we find ourselves on the defensive.

9. In summary, I would suggest that we use this paper as an opportunity to emphasize what can be done in improving our efforts in the leaks area, rather than cataloguing in considerable detail the difficulties encountered in pursuing leakers.

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